

A TRUE COPY

Jun 01, 2022

s/ Daryl Olszewski

Deputy Clerk, U.S. District Court
Eastern District of Wisconsin

UNITED STATES DISTRICT COURT

for the
Eastern District of Wisconsin

In the Matter of the Search of

*(Briefly describe the property to be searched
or identify the person by name and address)*A black Apple iPhone telephone with a cracked back
area of the phone, with telephone number
262-331-8620 associated with the device

Case No. 22 MJ 76

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A

located in the Eastern District of Wisconsin, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. Section 922(g)	Unlawful possession of a firearm by a prohibited person

The application is based on these facts:

See attached affidavit

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days *(give exact ending date if more than 30 days: _____)* is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Craig A. Fries

Applicant's signature

Craig Fries, Special Agent, ATF

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
_____ telephone *(specify reliable electronic means)*.

Date: 6/1/2022

William E. Duffin

Judge's signature

City and state: Milwaukee, Wisconsin

Honorable William E. Duffin, United States Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION UNDER RULE 41 FOR A
WARRANT TO SEARCH AND SEIZE**

I, Craig Fries, being duly sworn, state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the examination of property— electronic device—which are currently in law enforcement possession, and the extraction from that property of electronically stored information described in Attachment B.

2. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. I have been so employed since approximately 2014.

3. As part of my duties as an ATF Special Agent, I investigate criminal violations relating to the federal firearms laws, including Title 18, United States Code, Sections 922 and 924. I have participated in the execution of multiple federal search warrants. This affidavit is made in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the examination of property— electronic device—which are currently in law enforcement possession, and the extraction from that property of electronically stored information described in Attachment B, concerning the unlawful possession of a firearm by a prohibited person, in violation of Title 18, United States Code, Section 922(g).

3. The statements in this affidavit are based on my personal knowledge, and on information I have received from other law enforcement personnel, my review

of reports written by other law enforcement personnel, and from persons with knowledge regarding relevant facts. Because this affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth facts that I believe are sufficient to establish probable cause to believe that evidence and instrumentalities of violations of Title 18, United States Code, Section 922(g) are located within the Device.

IDENTIFICATION OF THE DEVICE TO BE EXAMINED

4. The property to be searched is described as follows:

a. A black Apple iPhone telephone with a cracked back area of the phone, with telephone number 262-331-8620 associated with the device, hereinafter “**Device A;**”

5. **Device A** is currently located at 730 Center Street, Racine, Wisconsin, 53403.

6. The applied-for warrant would authorize the forensic examination of the **Device** for the purpose of identifying electronically stored data particularly described in Attachment B.

FACTS SUPPORTING PROBABLE CAUSE TO SEARCH THE DEVICE

7. According to Racine Police Department reports and records, on or about March 17, 2022, patrol officers observed a Toyota 4 Runner bearing Nebraska Tag # WXY616 with a single occupant that matched the description from previous shots fired calls, the occupant was wearing a white hat and a gray hooded sweatshirt.

Officers attempted to initiate a traffic stop on the vehicle at which time the vehicle fled from police. Due to the reckless driving of the occupant of the vehicle officers terminated the pursuit of the vehicle. Additional responding officers observed the Toyota 4 Runner parked and a black male, later identified as Smith, jogging down the road from the vehicle, wearing a gray hooded sweatshirt, a white hat was recovered from his waistband. Officers were able to take Smith into custody.

8. Officers located a black bag in the area where the Toyota 4 Runner operated by Smith fled from police. Dash camera video recorded the operator of the fleeing Toyota 4 Runner discard the bag into traffic. During a search of the bag by police a Glock, model 19, 9mm pistol bearing serial number BTBZ620 with an extended magazine and 31 rounds of ammunition, a Glock, model 22, .40 caliber pistol bearing serial number IM3422PD with a “Glock Switch” device affixed to the firearm enabling it to function fully automatic, one blue pill weighing .4 grams of suspected MDMA, one yellow pill weighing .4 grams of suspected MDMA, 38.5 grams of marijuana and 1.3 grams of heroin.

9. According to interviews and preliminary reports from ATF agents, an ATF firearms interstate nexus expert researched the description of the Glock GMBH, model 22, 40 caliber, semi-automatic pistol bearing serial number IM3422PD also possessed by Smith on March 17, 2022, and determined in conjunction with his own research, knowledge, and experience, that the firearm was not manufactured in Wisconsin and therefore traveled in interstate commerce prior to Smith’s possession of the firearm.

10. According to certified state copies of conviction, Smith has been convicted of the following felonies: (1) on or about November 30, 1998, Smith was convicted of felony bail jumping in case 1998CF001131 in the Circuit Court of Racine County, Wisconsin, and sentenced to 2 years imprisonment and stayed 2 years' probation; (2) on or about April 3, 2000, Smith was convicted of manufacture/deliver cocaine (2 counts) in case 2000CF000091 in the Circuit Court of Racine County, Wisconsin, and sentenced to 3 years imprisonment; (3) on or about April 6, 2010, Smith was convicted of maintaining a drug trafficking place and felony bail jumping in case 2010CF000021 in the Circuit Court of Racine County, Wisconsin, and sentenced to 1 year imprisonment and 2 years extended supervision; (4) on or about May 25, 2010, Smith was convicted of possession with intent cocaine habitual criminality in case 2009CF001041 in the Circuit Court of Racine County, Wisconsin, and sentenced to 3 years imprisonment and 3 years of extended supervision; (5) on or about August 21, 2018, Smith was convicted of manufacture/deliver cocaine second and subsequent (2 counts) in case 2017CF001240 in the Circuit Court of Racine County, Wisconsin, and sentenced to 2 years imprisonment and 2 years' extended supervision.

11. On May 20, 2022, a federal criminal complaint for the arrest of Smith was obtained for unlawful possession of a firearm by a prohibited person.

12. On May 23, 2022, Smith was arrested by law enforcement at the Racine County Justice Facility. Smith's girlfriend, Princess Gray, was present at the time of arrest and relocated with police to her apartment located at 1856 Roosevelt Ave., Unit

2, Racine, Wisconsin, 53406 where she voluntarily gave police Smith's cell phone. Smith believed the Device A was located inside the apartment, but it was later learned the Device A was located in her vehicle. Device A was recovered by law enforcement and placed into secured evidence while maintaining power to the device.

13. On May 24, 2022, Smith was indicted by a federal grand jury in the Eastern District of Wisconsin for being a felon in possession of a firearm.

14. The **Device** has been in the custody of the Racine Police Department since its seizure from Smith on May 23, 2022.

15. Based upon my training and experience, I know that cellular phones may contain relevant evidence of possession of a firearm by a prohibited person, including text messages made or received from the **Device** that are located in the memory of the **Device**, which messages may provide information regarding the identities of, and the methods and means of operation and communication used by those who possess a firearm as a prohibited person. Moreover, digital photographs located in the memory of the **Device** may contain images of the firearms possessed or participants involved in the possession of a firearm by a prohibited person. Moreover, digital photographs stored in the **Device** may contain images of the user of the **Device**, the user's associates (including persons involved in or knowledgeable about the subject offenses), places frequented by the user of the phone leading up to and during the subject offenses, and locations and instrumentalities used in committing the subject offenses.

16. Through experience as a law enforcement officer and through the experience of other law enforcement officers as conveyed to me, I have learned that individuals involved in criminal offenses commonly use cellular telephones as a means to communicate.

17. Individuals involved in criminal offenses also often store telephone numbers and names or nicknames of fellow conspirators on their telephones and the telephones also reflect recent call history. Finally, individuals often use text messaging and digital photographs in furtherance of their criminal activity that are stored on cellular telephones.

18. Additionally, based on my training and experience, cellular telephones also can store location information that can provide evidence of the locations where participants met, including the locations where firearms were stored, transported, or transferred.

19. Because, as explained above, the **Device** is associated with the target in this case, and possession of a firearm by a prohibited person, and because, in my experience and in the experience of other agents, criminals use telephones to contact co-conspirators, there is probable cause to believe the **Device**, described further in Attachment A, contain evidence of violations of possession of a firearm by a prohibited person.

CONCLUSION

20. Based on the above information, I respectfully submit that there is probable cause to believe that possession of a firearm by a prohibited person, in violation of Title 18, United States Code, Section 922(g) has been committed, and that evidence and instrumentalities relating to this criminal conduct, as further described in Attachment B, will be found in the **Device**, as further described in Attachment A. I therefore respectfully request that this Court issue a search warrant for the **Device** more particularly described in Attachment A, authorizing the seizure of the items described in Attachment B, pursuant to the protocol described in the addendum to Attachment B.

ATTACHMENT A

The property to be searched is described as follows:

- a. A black Apple iPhone telephone with a cracked back area of the phone, with telephone number 262-331-8620 associated with the device, hereinafter “**Device A;**”

Device A is currently located at 730 Center Street, Racine, Wisconsin, 53403.

This warrant authorizes the forensic examination of the **Device** for the purpose of identifying the electronically stored information described in Attachment B.

ATTACHMENT B

1. All records on the **Device** described in Attachment A that relate to violations of 18 U.S.C. §§ 922(g), including, but not limited to:
 - a. lists of customers and related identifying information;
 - b. types, amounts, and prices of drugs and or firearms trafficked as well as dates, places, and amounts of specific transactions;
 - c. any information related to sources of drugs and or firearms (including names, addresses, phone numbers, or any other identifying information);
 - d. any information recording schedules or travel;
 - e. all bank records, checks, credit card bills, account information, and other financial records.
 - f. Photographs and/or video depicting possession of drugs and or firearms; and
2. Evidence of user attribution showing who used or owned the **Device** at the time the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, saved usernames and passwords, documents, and browsing history;

As used above, the terms “records” and “information” include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.